

FILED
4/3/2019 2:42 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
20181709204

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT - FIRST DISTRICT**

MIDWEST COMMERCIAL FUNDING,
LLC,

Plaintiff,

v.

ROBERT SYLVESTER KELLY AND
ALL UNKNOWN OCCUPANTS,

Defendant.

Case No. 2018 M1 709204

Hearing Date: No hearing scheduled

MOTION FOR TURNOVER

Plaintiff, Midwest Commercial Funding, LLC ("Plaintiff"), by and through its attorneys, Levenfeld Pearlstein, LLC, in support of its Motion for Turnover, respectfully states as follows:

1. On January 7, 2019, judgment was entered against Robert Sylvester Kelly in the amount of \$173,885.08 (the "Judgment").
2. On February 25, 2019, Plaintiff issued a third-party citation to Sony Music Holdings Inc. ("Sony").
3. Sony responded to the citation and froze \$264,534 in Kelly's biannual royalty account. A true and correct copy of Sony's response is attached hereto as **Exhibit 1**.
4. Pursuant to a separate third-party citation issued to Bank of America, on April 3, 2019, a turnover order was entered in Plaintiff's favor in the amount of \$154,527.22 (the "BoA funds"), which amount will be applied to the accrued interest through April 3, 2019 (\$3,687.31) and Judgment principal upon receipt.

5. After application of the BoA funds, the following amounts will remain due and owing on the Judgment, and Plaintiff requests the Court enter a turnover order with respect to the funds being held at Sony to satisfy these amounts:

Judgment Principal	\$23,045.17
Interest 4/4/19-4/10/19	\$39.77
Post-Judgment Attorneys' Fees	\$27,856.25
Post-Judgment Costs	\$1,490.36
Total:	\$52,431.55

6. Plaintiff is entitled to its post-judgment attorneys' fees and costs pursuant to the Lease between the parties, which has not been terminated, and under Illinois law. *See e.g., Poilevey v. Spivack*, 368 Ill.App.3d 412, 857 N.E.2d 834 (1st Dist. 2006). A true and correct copy of the Lease is attached as Exhibit A to the Complaint, which is attached hereto as Exhibit 2.

7. An Affidavit and Petition with respect to the attorneys' fees sought is attached hereto as Exhibit 3.¹

WHEREFORE, Plaintiff, Midwest Commercial Funding, LLC, respectfully asks this Court to enter a turnover order against Sony Music Holdings, Inc. in favor of Robert Sylvester Kelly for the use of Midwest Commercial Funding, LLC in the amount of \$52,431.55; and for such other and further relief as is just and proper.

¹ An additional two hours of Jamie Burns' time is sought for preparation and presentment of this Motion. This amount totals \$860, and those fees have been included in the request above.

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**MIDWEST COMMERCIAL FUNDING,
LLC**



By: _____
One of Its Attorneys

EXHIBIT 1

ANSWER OF THIRD PARTY RESPONDENT CITATION

This first section must be filled out by the judgment creditor.

Citation/Respondent: Sony Music Holdings Inc.Court Date: March 20 2019Defendant's Name: ROBERT SYLVESTER KELLYSSN: xxx-xx-Case No. 18 M1 709204Judgment Balance: \$ 173,885.08This is a Citation: Freeze up to double the Judgment Balance

INTERROGATORIES

1. On the date of service of the citation, did you have in your possession, custody or control any personal property or monies belonging to the judgment debtor? ☒ Yes ☐ No

If the answer is "YES" GO TO THE NEXT QUESTION. If "NO", GO TO THE INSTRUCTIONS.

2. Is this an IRA account? Or have all of the deposits made during the past 90 days been electronically deposited and identified as exempt Social Security, Unemployment Compensation, Public Assistance, Veteran's Benefits, Pension or Retirement or by a source drawing from any other statutory exemptions? ☐ Yes ☒ No

If the answer is "YES" GO TO THE NEXT QUESTION. If "NO", GO TO THE INSTRUCTIONS.

3. Is/Are the account(s)' current balance(s) equal to or less than the total of the exempt deposits? ☐ Yes ☐ No

If you answered "YES" TO ALL THREE (3) QUESTIONS AND FUNDS IN THE ACCOUNT(S) ARE EXEMPT, DO NOT FREEZE THE FUNDS.
GO TO THE "INSTRUCTIONS" BELOW.

	ACCOUNT BALANCE	AMOUNT WITHHELD
A. Savings Account	\$ _____	\$ _____
B. Check/MMA/Now Account	\$ _____	\$ _____
C. Certificate of Deposit	\$ _____	\$ _____
D. Trust Account <u>Other</u>	\$ _____	\$ _____
(Describe) <u>Bi annual royalty accounts</u>		
E. Safety Deposit <input type="checkbox"/> Yes <input type="checkbox"/> No		
F. Land Trust No. _____		
G. Less Right of Offset for Loans		\$ _____

TOTAL AMOUNT FROZEN: \$ 264,534

5. List all electronic deposits into account(s) and their source(s) except deposits:

Account No.	Source	Monthly Amount
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

6. List all joint account holders or adverse claimants:

Name _____	Name _____	Name _____
Address _____	Address _____	Address _____
Account Information:	Account Information:	Account Information:
Type: <input type="checkbox"/> Checking <input type="checkbox"/> CD Savings	Type: <input type="checkbox"/> Checking <input type="checkbox"/> CD Savings	Type: <input type="checkbox"/> Checking <input type="checkbox"/> CD Savings
<input type="checkbox"/> Account Number _____	<input type="checkbox"/> Account Number _____	<input type="checkbox"/> Account Number _____

INSTRUCTIONS

(1.) Fill out and sign the certification below. (2.) This Answer must be filed at least three (3) days before the court date to assure timely processing. (3.) Fax or mail a copy of this Answer to (i) the Court, (ii) Plaintiff's attorney and (iii) Judgment Debtor. If filing in the First Municipal District, you may fax to (312) 603-6522 or mail to the Clerk of the Court, Richard J. Daley Center, 50 W. Washington Street, Room 602, Chicago, IL 60602. (4.) You will receive a copy of a Court Order by fax or mail instructing you how to proceed and where to send any withheld funds.

CERTIFICATION

Under the penalties as provided by law pursuant to Section 1-109 of the code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct and that I have mailed this Answer to Defendant(s).

Date: 3/27/19Respondent Name: D. CastagnaAddress: 25 Madison AveCity/State/Zip Code: NY NY 10010Telephone: 212 833 6273

Fax: _____

David Castagna
Print Name

David Castagna
Signature of Agent